

Amendment and Response

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Serial No.: 10/673,538

Confirmation No.: 1846

Filed: September 29, 2003

For: METHODS AND KITS FOR THE DETECTION OF ERYTHROCYTES**Remarks**

The Office Action mailed February 22, 2006 has been received and carefully reviewed. Please cancel claims 14-19, 22-25, 31 and 34, without prejudice.

Claims 1, 9, 12, 26, 29, 32, 33 and 35 having been amended and claims 14-25, 31 and 34 having been canceled, without prejudice, the pending claims are claims 1-13, 26-30, 32, 33 and 35. Reconsideration and withdrawal of the rejections are respectfully requested.

Claim 1 has been amended to recite that the strong reducing agent is selected from the list of strong reducing agents previously recited in, and now deleted from, claim 35.

Claim 35, which depends from claim 1, has correspondingly been further amended to recite that the treated specimen "fluoresces with a spectrum from about 530 nm to about 670 nm when excited at about 480 nm" as previously recited in, and now deleted from, claim 1.

Like claim 1, independent claims 9, 12, 26, 29, 32 and 33 have also been amended to recite that the strong reducing agent is selected from the list of strong reducing agents previously recited in claim 35. Likewise, claims 9, 12, 26 and 33 have been amended to delete the recitation of fluorescence with a spectrum from about 530 nm to about 670 nm when excited at about 480 nm.

Allowable claims

Applicants acknowledge, with appreciation, the finding of allowability for claims 2-4.

Claim objections

Claims 8 and 35 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim.

The base claim (claim 1) has been amended to include a recitation of selected strong reducing agents that was previously set forth in, and now deleted from, claim 35. It is respectfully submitted that claim 1 as amended, for this reason as well as reasons described below, is allowable.

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Reconsideration and withdrawal of the objection to claims 8 and 35 is respectfully requested.

Rejection under 35 U.S.C. §112, Second Paragraph

Claim 31 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. This rejection is respectfully traversed. However, claim 31 has been canceled, rendering the rejection moot. Withdrawal of the rejection of claim 31 under 35 U.S.C. §112, second paragraph, is therefore respectfully requested.

Rejection under 35 U.S.C. §103*Schwartz (U.S. Pat. No. 4,378,971)*

The Examiner rejected claims 1, 5-7, 9-14, 18 and 22-34 under 35 U.S.C. §103(a) as being unpatentable over Schwartz. This rejection is respectfully traversed.

Claims 14, 18, 22-25, 31 and 34 have been canceled, thereby rendering the rejection moot as to those claims.

Claims 1, 9, 12, 26, 29, 32 and 33 have been amended to recite that the strong reducing agent is selected from a list of strong reducing agents previously recited in, and now deleted from, claim 35.

Applicant notes that Schwartz does not teach the selected strong reducing agents recited in claim 35, and claim 35 was not subject to this art rejection. Since claims 1, 9, 12, 26, 29, 32 and 33 have been amended herewith to include recitation of the list of strong reducing agents as in claim 35, Applicants submit that the obviousness rejection of claims 1, 9, 12, 26, 29, 32 and 33 over Schwartz has been overcome.

Claims 5-7 and 13 depend from claim 1; claims 10 and 11 depend from claim 9; claims 27 and 28 depend from claim 26; and claim 30 depends from claim 29; thus, at least by virtue of the

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amendment of the base claims, claims 5-7, 10, 11, 13, 27, 28 and 30, are also nonobvious in view of Schwartz.

Applicant notes for the record its disagreement with, among other things, the Examiner's conclusion that excitation of the specimen at "about 480 nm" would be obvious in view of the teachings of Schwartz. However, in view of the amendment of the independent claims to incorporate the recitation from claim 35 of a group of strong reducing agents from which the strong reducing agent is selected, Applicant has further amended claims 1, 9, 12, 26 and 33 to delete the recitation that the treated specimen "fluoresces with a spectrum from about 530 nm to about 670 nm when excited at about 480 nm."

Reconsideration and withdrawal of the rejection of claims 1, 5-7, 9-14, 18 and 22-34 under 35 U.S.C. §103(a) as being unpatentable over Schwartz is respectfully requested.

Tomita et al. (US 2004/0171016)

The Examiner rejected claims 14-17, 19, 22-25, 31 and 34 under 35 U.S.C. §103(a) as being unpatentable over Tomita et al. This rejection is respectfully traversed. However, claims 14-17, 19, 22-25, 31 and 34 have been canceled, rendering the rejection moot.

Withdrawal of the rejection of claims 14-17, 19, 22-25, 31 and 34 under 35 U.S.C. §103(a) as being unpatentable over Tomita et al. is therefore respectfully requested.

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For: METHODS AND KITS FOR THE DETECTION OF ERYTHROCYTES**Summary**

Claims 2-4 were indicated as allowable in the Office Action mailed February 22, 2006, and it is respectfully submitted that the other pending claims 1, 5-13, 26-30, 32, 33 and 35, as amended herewith, are likewise in condition for allowance. Notification to that effect is earnestly requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

By

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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 12 day of May, 2006, at 1:45 pm (Central Time).

By: 

Name: Deb Schurmann